

DEC 22 2010

JAN 12 2011

18 pages

## OFFICE OF PETITIONS

PTO/SB/65 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016  
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF  
MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(b))**Docket Number (Optional)  
ATOMIC-1Mail to: Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria VA 22313-1450  
Fax: (571) 273-8300NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at  
(571) 272-3282.Patent Number: 5,678,541Application Number: 08/616,223Issue Date: October 21, 1997Filing Date: March 15, 1996CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent  
number (or reissue patent number, if a reissue) and (2) the application number of the actual  
U.S. application (or reissue application) leading to issuance of that patent to ensure the fee(s)  
is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

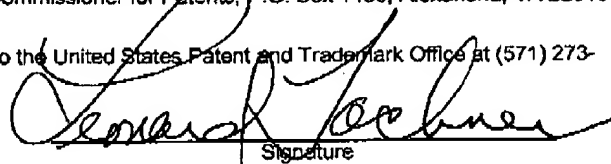
Also complete the following information, if applicable:

The above-identified patent:

01/11/2011 DALLEN 00000010 060930 578541

☐ is a reissue of original Patent No. 01, FC:1599  
original application number original issue date 1940.00 DA  
original filing date \_\_\_\_\_☐ resulted from the entry into the U.S. under 35 U.S.C. 371 of international application  
\_\_\_\_\_ filed on \_\_\_\_\_**CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))**

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is

(1) being deposited with the United States Postal Service on the date shown below with sufficient postage as first class  
mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-  
1450 OR(2) transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-  
8300.12/22/10  
Date  
Signature

LEONARD TACHNER

Typed or printed name of person signing Certificate

[Page 1 of 4]

This collection of information is required by 37 CFR 1.378(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

DEC 22 2010

PTO/SB/65 (03-09)

Approved for use through 03/31/2012. OMB 0851-0018

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

## 1. SMALL ENTITY

☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27

## 2. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

## 3. MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition, unless it was paid earlier.

NOT Small Entity			Small Entity		
Amount	Fee	(Code)	Amount	Fee	(Code)
<input type="checkbox"/> \$ _____	3 ½ yr fee	(1551)	<input type="checkbox"/> \$ _____	3 ½ yr fee	(2551)
<input type="checkbox"/> \$ _____	7 ½ yr fee	(1552)	<input checked="" type="checkbox"/> \$ 1240	7 ½ yr fee	(2552)
<input type="checkbox"/> \$ _____	11 ½ yr fee	(1553)	<input checked="" type="checkbox"/> \$ 2055	11 ½ yr fee	(2553)

MAINTENANCE FEE BEING SUBMITTED \$ 3295

## 4. SURCHARGE

The surcharge required by 37 CFR 1.20(i)(1) of \$ 700 (Fee Code 1557) must be paid as a condition of accepting unavoidably delayed payment of the maintenance fee.

SURCHARGE FEE BEING SUBMITTED \$ 700

## 5. MANNER OF PAYMENT

☐ Enclosed is a check for the sum of \$ \_\_\_\_\_☒ Please charge Deposit Account No. 06-0930 the sum of \$ 3995☐ Payment by credit card. Form PTO-2038 is attached.

## 6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY

☒ The Director is hereby authorized to charge any maintenance fee, surcharge or petition fee deficiency to Deposit Account No. 06-0930

DEC 22 2010

PTO/SB/65 (03-09)

Approved for use through 03/31/2012. OMB 0861-0016

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

## 7. OVERPAYMENT

As to any overpayment made, please

☒ Credit to Deposit Account No. 06-0930

OR

☐ Send refund check

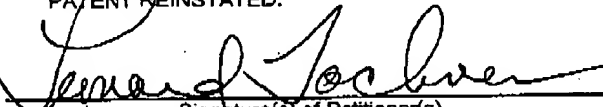
## WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

## 8. SHOWING

The enclosed statement will show that the delay in timely payment of the maintenance fee was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that this petition is being filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The statement must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which the patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

## 9. PETITIONER(S) REQUESTS THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED.

  
Signature(s) of Petitioner(s)12/22/10  
Date

LEONARD TACHNER

Typed or printed name(s)

17961 SKY PARK CIRCLE, SUITE 38-E

Address

IRVINE, CALIFORNIA 92614

Address

26,344

Registration Number, if applicable

949-752-8525

Telephone Number

## ENCLOSURES:

- ☒ Maintenance Fee Payment  
☒ Statement why maintenance fee was not paid timely  
☒ Surcharge under 37 CFR 1.20(i)(1) (fee for filing the maintenance fee petition)  
☐ Other:

(Page 3 of 4)

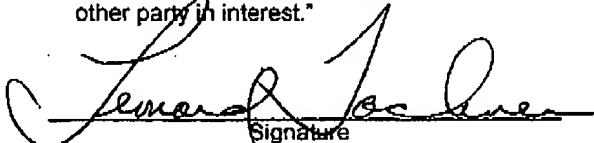
PTO/SB/65 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

  
Signature

12/22/10  
Date

LEONARD TACHNER

Type or printed name

26,344

Registration Number, if applicable

### STATEMENT

(In the space below, please provide the showing of unavoidable delay recited in paragraph 8 above.)

This petition is supported by declarations of the undersigned, Leonard Tachner counsel for the patentee, the office manager of counsel's office, Ms. Janis foreman and a physician, Dr. Samuel A. Albert who is a board certified psychiatrist.

The declaration evidence shows that over a protracted period beginning in 2005 Ms. Foreman experienced a psychological breakdown or psychotic episode as described by Dr. Albert who has interviewed her for purposes of making his enclosed Statement/Declaration. The breakdown of Ms. Foreman caused her to fail in her office duties which included notifying the patentee of the need to pay maintenance fees, obtaining the client's authorization to make such payments and then proceeding to send such payments to the U.S. Patent & Trademark Office in a timely manner. Only in the past few weeks has her strange and unexpected behavior come to light.

Ms. Foreman has been a loyal and reliable employee of Tachner's office for more than thirty-two years. She did not exhibit any form of overt personality characteristics or behavior which would have led Mr. Tachner to anticipate that she would not have fulfilled her normal office duties as she had done for more than three decades. Based upon Dr. Albert's interview and diagnosis of Ms. Foreman, it is only now understood that she was overworked and stressed beyond her limit (see Dr. Albert's Statement/Declaration) but that she was "programmed" to hide her predicament for fear of losing her position.

Based upon the foregoing as more thoroughly detailed in the enclosed declarations, it is earnestly believed that the revival of the subject patent based upon entirely unforeseen circumstances that were truly "unavoidable", justify a granting of this petition and such is respectfully solicited.

(Please attach additional sheets if additional space is needed)

RECEIVED

JAN 12 2011

I, Leonard Tachner, do hereby declare as follows: OFFICE OF PETITIONS

A. INTRODUCTION

1. I am a member of the State Bar of California (1973) and admitted to practice before the U.S. Patent and Trademark Office (1971). I make this declaration in support of petition under Rule 1.378(b). This declaration is based on my personal knowledge and if called as a witness, I could and would testify competently to the facts set forth herein under oath.

B. BACKGROUND AND PROFESSIONAL EXPERIENCE

2. I earned a Bachelor of Science degree in Electrical Engineering from City College of the State University of New York in 1965 and a Master of Science degree in Electrical Engineering from California State University at Long Beach in 1969. I received a Juris Doctor degree cum laude from Western State University in 1973.

3. I was admitted to practice before the United States Patent and Trademark Office as a patent agent since about December 1971 and I was assigned registration number 26,344. I was admitted to the State Bar of California in 1973. Over my entire career no disciplinary action has been taken against me by the United States Patent and Trademark Office, the State Bar of California or any other agency or administrative body.

4. I am admitted to practice before the U.S. Supreme Court, the Court of Appeals for the Federal Circuit, the Ninth Circuit Court of Appeals, all the U.S. District Courts of California and the Supreme Court of California.

5. I began my legal career in 1973 and have more than 35 years of private practice experience in intellectual property matters including patent, trademark, copyright and unfair competition. I began my own private practice as a patent attorney in March 1978, initially as a partner in a small firm and later as a sole practitioner in 1984.

6. I have prepared and prosecuted over 800 U.S. patent applications. In addition, I have been lead trial counsel in numerous U.S. District Court trials involving patent validity and infringement and served as a testifying patent law expert in federal district court litigation and arbitration proceedings.

7. I have an "Av" Martindale-Hubbell Peer Review rating.

C. LAW PRACTICE MANAGEMENT

8. I have two employees working full time as office staff. Janis Foreman is my office manager. Ms. Foreman was hired in June 1978 and has been continually employed by me since that time. In 1988 I hired Jodie Pyle as a typist. Jodie, now Mrs. Jodie Miller, has been continually employed by me since that time.

9. For at least the past twenty years, Ms. Foreman, as office manager, has been responsible for entering information into my patent and trademark docket and handling routine communications with clients and associates, all under my direction and supervision. In addition, Ms. Foreman does the bookkeeping for my office including billing and tracking our accounts receivable and accounts payable. She also prepares the final version of documents to be filed in the U.S. Patent and Trademark Office.

10. I have personally devoted uncountable hours to training and teaching Ms. Foreman over the past three decades. Over the last thirty two years of employment, she has become well-trained in every aspect of the administration of my practice. However, despite her acumen, we have always maintained clear lines between her responsibilities as an employee and mine as a patent attorney. Her work is done under my supervision. She is not authorized to make any decision that could affect, diminish or be inimical in any way to a client's rights. Her actions in dealing with clients, the U.S. Patent and Trademark Office and with our foreign associates, must be based on my instructions that she receives by conferring with me. She is not to carry out such actions until and unless she first confers with me. Our office procedure is clear – all substantive incoming communications are to be reviewed by me.

11. I maintain a docketing system whereby Ms. Foreman receives all incoming correspondence and docketing relevant dates in our electronic docket. As each due date in the docket is responded to Ms. Foreman has the responsibility for noting when the due date was met.

12. I maintain supervisory authority of the docket. I routinely check the docket to keep aware of upcoming deadlines. I also regularly confer with Janis regarding matters coming up on the docket. Ms. Foreman also reviews the docket for upcoming due dates. Where appropriate, Ms. Foreman consults with me regarding matters entered into the docketing system.

13. When Ms. Foreman is either sick or on vacation or otherwise unavailable, Jodie fills in. Jodie's responsibilities include, typing drafts of patent applications and prosecution documents and preparing form letters to clients.

14. Over the years of her employment in my office, Ms. Foreman has been a loyal and devoted employee. Janis has normally handled her responsibilities in a professional and competent manner.

D. CHRONOLOGY OF EVENTS IN THIS MATTER

15. On or about Monday November 22, 2010 Ms. Foreman showed me a table of patent-related matters of Atomic Aquatics that she had prepared at the request of Mr. Dean Garraffa, one of that company's principals. Atomic Aquatics has been an important client of mine for about the past fifteen years and I have known its principals, Dean Garraffa and Doug Toth for more than twenty years.

16. I noticed that the table had a number of entries for Atomic Aquatics issued U.S. Patents which indicated that they had become abandoned for failure to pay maintenance fees between 2005 and 2008. She informed me that she believed that these abandonments were known to the client's principals and were the result of their lack of adequate funds or because the corresponding products had become obsolete. To the best of my knowledge, Ms. Foreman sent this table to Mr. Garraffa that day on Wednesday morning, November 24. On that same day I left Southern California for the four-day Thanksgiving weekend, arriving at my destination that evening. I checked my email and opened an email from Ms. Foreman stating that Mr. Garraffa had received the table and had called the office that day and expressed a desire to see me as soon as I returned from the Thanksgiving weekend.

17. When I returned to the office on Monday November 29, 2010, Mr. Garraffa was already waiting for me in the lobby talking to Ms. Foreman. He indicated a need to meet with me to speak to me about the contents of the table Ms. Foreman had sent to him. Mr. Garraffa then proceeded to explain that he and Mr. Toth were shocked to learn that several of their issued U.S. patents had apparently expired without their knowledge and that they needed to find out how it had happened and what could be done to remedy the situation. I told him that I would investigate the various files involved and report to him as soon as possible.

18. Over the ensuing two days I had discussions with Ms. Foreman and I examined a number of the Atomic Aquatics patent files. I also spoke to Mr. Garraffa about a provisional application that was supposed to be followed by a corresponding non-provisional but hadn't been.. In examining the file, I found various instructions I had prepared for Ms. Foreman including a set of claims for the non-provisional, but no evidence that Ms. Foreman had carried out my instructions or that a non-provisional had been prepared and filed. It became evident to me that Ms. Foreman had failed to do her work in regard to a number of Atomic Aquatics files including the file No. ATOMIC-1 (Patent No. 5,678,541) for which this petition is being filed.

19. When I confronted her, she eventually admitted to me that she had lost control of her tasks, particularly over a several year period between 2005 and 2008 when she just couldn't keep up with the demands of the job and perform all of her duties in a timely manner. She revealed that she was too afraid and embarrassed to tell me about this behavior. I then reported to Mr. Garraffa and advised him that I would immediately begin preparation of petitions to revive the Atomic Aquatics patents that had been lost as a result of Ms. Foreman's shocking and totally unexpected behavior.

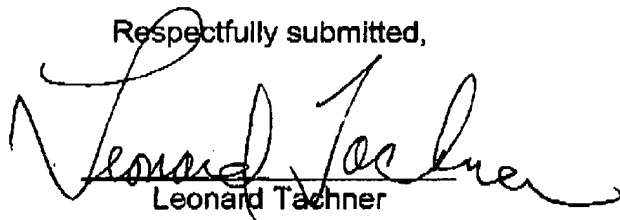


20. I arranged for Ms. Foreman to consult with a psychiatrist acquaintance so I could learn whether her problems were treatable and whether I could trust her work in the future. A Declaration Report of Dr. Samuel Albert is enclosed herewith.

21. Based upon Dr. Albert's Report and my own observations, I believe that Ms. Foreman, as a result of overwork and stress beyond her limit, experienced a lengthy period of irrational behavior. During this period she simply didn't carry out all of her usual responsibilities including communicating with clients and paying patent issue and maintenance fees including the following: file No. ATOMIC-1 for Patent No. 5,678,541 maintenance fees. Furthermore, Ms. Foreman was afraid to admit her inadequacies and endanger her position which had become such a predominant aspect of her life. Consequently, she did all she could to hide the problems until just recently.

Pursuant to the terms of 28 U.S.C. §1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true. The declaration made herein are made with the knowledge that willful false statements and the like are punishable by fine, imprisonment, or both under 18 U.S.C. §1001 and may jeopardize the validity of the above-captioned patent.

Respectfully submitted,

  
Leonard Tachner

12/22/10

I, Janis Foreman, do hereby declare as follows:

A. INTRODUCTION

1. This declaration is based on my personal knowledge and if called as a witness, I could and would testify competently to the facts set forth herein under oath.

B. BACKGROUND AND PROFESSIONAL EXPERIENCE

2. I am the office manager for attorney Leonard Tachner. I was hired in June 1978 and have been continually employed by Mr. Tachner since that time.

3. Over the past thirty two years, I have received an extensive amount of training and instruction from Mr. Tachner in all aspects of his practice. For the last approximately twenty years, I have been responsible for entering information into Mr. Tachner's patent and trademark docket. I handle routine communications with clients and associates, all under Mr. Tachner's direction and supervision. I also manage the bookkeeping, billing, and tracking of Mr. Tachner's accounts receivable and accounts payable. I prepare the final version of documents to be filed in the U.S. Patent and Trademark Office.

4. Our office procedures are clearly defined by Mr. Tachner. I receive all incoming correspondence and docket relevant dates in our electronic docket. As each due date in the docket is responded to, I am responsible for noting in the electronic docket when the due date was met.

5. Mr. Tachner maintains supervisory authority of the docket and routinely checks it for accuracy and upcoming deadlines. Mr. Tachner regularly confers with me regarding matters coming up on the docket. I review the docket daily for upcoming due dates and Mr. Tachner periodically reviews the docket for the same purpose. Where appropriate, I consult with Mr. Tachner regarding matters entered into the docketing system.

6. In connection with preparing this declaration, I have reviewed correspondence, emails and other documents relating to this matter. Though I cannot explain or justify many of my actions described below, I have set forth in this declaration my true recollection of the events.

C. CHRONOLOGY OF EVENTS IN THIS MATTER

7. On or about November 17, 2010, I received a phone call from Mr. Dean Garraffa of Atomic Aquatics. He asked me to prepare a tabular report showing the current status of all of their patent-related files in our office.

8. In response to Mr. Garraffa's request, I spent the following two days carefully examining all of the patent-related files of Atomic Aquatics. I found that there were a number of issued patents that had expired for non-payment of maintenance fees that had been due to be paid since as early as 2005. I also found a pending design patent application that had become abandoned for failure to pay an issue fee and a provisional application that had been allowed to lapse without filing a corresponding non-provisional.

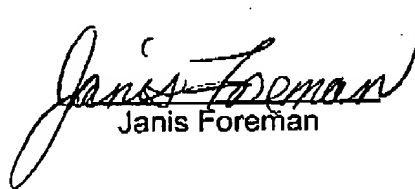
9. I actually filled out the tabular report to reflect the true status of all of the Atomic Aquatic files, but I could not fully understand why there appeared to be numerous problems associated with these files, particularly in regard to the past several years. My initial reaction was that the client had communicated authorization to withhold such payments and filings because of their financial problems or product obsolescence, but I could not find any documents or other evidence supporting these "feelings". In retrospect, I now realize that these were unsupported rationalizations that cover a period of several years during which I was functioning at less than my normal capabilities.

10. I don't know precisely what may have affected my mental performance during this period, but I do recall that I was under a great deal of pressure and stress due to my work load and that I was feeling continuously overwhelmed and unable to keep up. However, I was reluctant to tell Mr. Tachner of my concerns because I did not want to disappoint him after so many years.

11. Upon discussing this matter with Mr. Tachner and Dr. Samuel Albert,, I now realize that it was a mistake to keep Mr. Tachner in the dark in regard to my sense of being overwhelmed and that I should have informed Mr. Tachner of my need for help. I also now realize the harm my actions have caused the client and Mr. Tachner. I am truly sorry.

Pursuant to the terms of 28 U.S.C. §1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true. The declaration made herein are made with the knowledge that willful false statements and the like are punishable by fine, imprisonment, or both under 18 U.S.C. §1001 and may jeopardize the validity of the above-captioned patent.

Dec 22, 2010

  
Janis Foreman

**CONFIDENTIAL**Statement of Samuel H. Albert, M.D.

I, Samuel H. Albert, M.D., am a practising Psychiatrist having an office in Fountain Valley, California. I have been a licensed physician in the State of California beginning July 1, 1969. I have been in practice as a Psychiatrist since October 1, 1972 and a board certified Psychiatrist since November 1978.

In late November 2010 I was asked to render professional consultation as a psychiatric expert for the purpose of diagnosing a Ms. Janis Foreman, who is a legal secretary and office manager for Attorney Leonard Tachner in Irvine, California.

I was presented with certain facts relating to Ms. Foreman's job role and apparent irrational behaviour over the past few years or so in regard to her performance of her duties at Mr. Tachner's office. As I understand these facts, Ms. Foreman has had for over thirty years working in the Tachner law firm, the responsibility for billing clients for professional services carried out by the Tachner firm, as well as communicating with vendors of outside services for the firm and its clients, and generally running the day to day activities of the firm according to established rules and instructions of Mr. Tachner.

Besides Ms. Foreman and Mr. Tachner, I am informed that there is another full time secretary who takes instruction directly from Ms. Foreman and that from time to time there are one or two additional part time employees who may be brought in to carry out certain maintenance-type activities such as library upkeep, filing, copying, mail preparation and the like.

As I understand their relationship, Mr. Tachner spends his time mostly doing legal work for the firm's clients and he depends heavily on Ms. Foreman to run the business aspects of the firm including billing, docketing, payroll and communicating with outside service providers. She also handles Mr. Tachner's document preparation and maintaining his files which are quite numerous. Clearly from what I've learned, the Tachner law firm is a very busy firm and Ms. Foreman has a heavy workload with many varied and important responsibilities.

I have had the opportunity to read Mr. Tachner's statement regarding Ms. Foreman's behaviour in relation to the client Atomic Aquatics. I have also read Ms. Foreman's statement pertaining to those matters. In addition, I have had a two hour interview with Ms. Foreman in which she participated voluntarily at the request of Mr. Tachner.

**CONFIDENTIAL**

I do not consider Ms. Janis Foreman to be a patient of mine at this time because I have been asked to consult in the capacity of an expert with the intent of communicating my diagnosis with the constraints of physician-patient privilege. I have made this special purpose of my participation in this matter clear to Ms. Foreman and she has acknowledged that she understands that she is not my patient and that I am not her physician.

Based upon these facts communicated to me, my reading of the Tachner and Foreman statements and my interview with Ms. Foreman, I have formed a preliminary medical opinion as follows:

Ms. Foreman's irrational behaviour is a result of her reaction to a temporary but continually increased work overload which became more than she could handle without any apparent way to vent the frustration, the worry and concern that's she increasingly felt as she fell behind in her work.

She correctly regards her most significant responsibility as control of cash flow by timely billing of clients and payments to vendors. In the period from early 2005 to the end of 2007, she evidently became so busy that's she lost the ability to bill clients in a timely manner and pay the firm's obligations when they were due.

She began feeling a sense of guilt for not being able to properly handle these responsibilities. She did not want to inform Mr. Tachner of these problems because she did not want to have her position diminished or lose any esteem in the eyes of her boss. She had no one else to tell of these difficulties and therefore no way to share these problems. After almost 30 years of being so capable and trustworthy, she could not bring herself to admit any inability to handle her responsibilities. She worried about her job, she worried about what Mr. Tachner would think of her, she spent more time concerned with her problems than with solving her problems.

This type of destabilizing behaviour resulted in a spiralling down in her ability to think and act rationally. She began to do and say unreasonable and unrealistic things. She lost any sense of reality. She lost her sense of proportionality. Her goal became one of maintaining a sense of continuity and stability for Mr. Tachner even by misleading him and making false statements to him and to others. Ms. Foreman was suffering from an acute psychotic breakdown brought on by rising pressures at her most important environment, her workplace where she had succeeded for decades.

**CONFIDENTIAL**

If Ms. Foreman were my patient I would propose that she undergo a program of therapy designed to give her a better sense of balance to handle such occasions of high levels of work pressure in a more motive and stable manner. I would prescribe an anti-depressant medication to address her symptoms of depression. Such medications include Prozac, Paxil, Zoloft, Lexapro, Wellbutrin and others. I would prescribe an anti-anxiety medication to address her symptoms of anxiety. Such medications include Librium, Ativan, Klonopin, Tranxene and others.

I would suggest to her that she should help her employer adjust her office responsibilities to reduce her work load if possible. I believe that Ms. Foreman's illness is amenable to treatment.

I declare under penalty of perjury that the foregoing is true and correct.  
Executed this 13 day of December 2010 at Fountain Valley, California.

By: Samuel H Albert MD  
Samuel H. Albert, M.D.

# CONFIDENTIAL

The following information is appended so as to provide medical basis and reasoning for my conclusion:

## Assigned Duties and Work Load of Ms. Foreman:

Ms. Janis Foreman is a Caucasian female age 61, born 4-26-1949. She has been an employee since June 19, 1978 of Leonard Tachner, Esq. Ms. Foreman is the office manager.

Ms. Foreman states that she is a Legal Secretary and is the Manager of the office where she works. She describes her assigned duties as numerous, detailed and often overwhelming.

She states, "I have a giant case load. I do many jobs." Among the long list of tasks for which she is responsible, she mentioned the following:

## TASKS RELATED TO THE LEGAL WORK OF THE OFFICE:

1. Managing the foreign filing of patent information,
2. Managing the United States filing of patent information,
3. File patent application in the United States,
4. File world-wide trademarks, a cumbersome process,
5. File United States trademark applications,
6. Obtain required documents from the client and the United States Patent Office,
7. Obtains a United States copy of certified documents,
8. Prepares and files Assignment documents in the United States and Worldwide,
9. She does docketing of all the documents that enter the office,
10. She sends out form letters,
11. Prepares and obtains Power of Attorneys from companies,
12. She types all amendments and applications,
13. She files copyrights,
14. She does filing, pulling and replacing files,
15. She does drawing corrections and declarations. "I'll get the draftsman to come in and do new drawings".
16. Oversee preparation of photocopying (me or Jodie),
17. She does work related to the international Patent Cooperation Treaty (PCT). She does work related to the PCT, an international treaty involving nations that have signed the PCT agreement with the U.S.A.,
18. Letters take a great deal of time and each letter has to be placed in the file appropriate to the letter,
19. From the parent case there are often several other cases that come from the parent case, each having its own number,
20. Oversight of the office docketing system,



**CONFIDENTIAL**

21. Typing of drafts of patent applications and prosecution documents.

TIME PRESSURES often become extreme due to the following factors

1. Everything received by the office has a deadline of 30, 60 or 90 days,
2. Often the inventor works for a company and then leaves the company.

OVERWORK of Ms. Foreman can be ascertained by examining these factors:

The quantity of documents is massive.

Locate a misplaced document might take several hours or days.

Ms. Foreman often works 2 or 3 nights extra each week to 7-10 PM depending on what is going on in the office.

#### ASSIGNED OFFICE TASKS NOT RELATED TO THE LEGAL WORK

1. Ms. Foreman does the billing of clients for the office, and the bill paying. The attorney in the office signs the checks.
2. Pays bills.
3. Bills clients.
4. Bill clients for costs.
5. "I am responsible to obtain supplies for the office; I order or buy supplies at Sam's Warehouse or Costco stores or stationary stores including soft drinks and bulk paper".
6. She cleans the office on the weekends.

HELP AND ASSISTANCE ARE PRAOVIDED BY ADDITIONAL EMPLOYEES IN THE OFFICE, TO A LIMITED DEGREE.

The Secretary (Jodie) does help a bit.

# CONFIDENTIAL

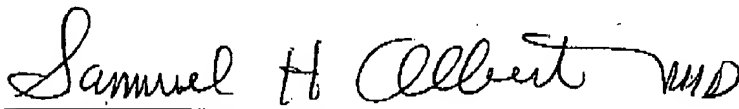
**Current psychiatric mental status evaluation:**

Caucasian Female appearing her stated age. Judgement intact for basic activities of daily life, but is revealed to be quite weak during the time of the events starting in early 2005. She did think in a way that can only be described as psychotic at the time. She made extremely poor decisions, thought in unusual manners, believed events to be true that were in fact false, and acted upon these convictions rather than logic or the usual standing orders of her employer.

Her mood is one of anxiety with an undercurrent of depression. Her daily life is usually non-eventful. She spends most of our evaluation session talking about the events which occurred while she was employed by the law firm of Leonard Tachner. She has many recollections of the events. Speech is grammatical most of the time. No stutter, stammer or lisp. Dress is casual, with cotton-wash pants and a nondescript shirt. No jewelry other than an inexpensive wristwatch. No symptoms to indicate disorientation, hallucinations, illusions, delusions, true phobias, obsessive thinking, compulsive or stereotypic movement inappropriate affect. Affect is congruent to speech and thought and is appropriate mood. Psychological understanding and insight is absent.

**Diagnosis:** Major Depression, severe, with psychotic episodes.  
Generalized Anxiety Disorder

Very truly yours,



Samuel H. Albert, M.D.